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Caitlin Halligan's Record of Activism

Last Congress, the Senate expressed its will and [rejected](#) the nomination of Caitlin Halligan to the United States Circuit Court of Appeals for the District of Columbia. This Congress, President Obama ignored the Senate's advice and re-nominated Ms. Halligan. The Senate [is expected to](#) take up consideration of this nomination in the near future. Ms. Halligan's well-documented record as a committed advocate of extreme positions suggests she would not be a fair and impartial jurist.

Targeting the Second Amendment

As Solicitor General of New York, Ms. Halligan vigorously advanced a specious legal theory attempting to hold gun manufacturers liable for the crimes of third parties. Gun Owners of America [described](#) this as a strategy to "eliminate the manufacture of firearms in America."

In *New York v. Sturm & Ruger*, a New York state court case, Ms. Halligan argued that gun manufacturers created, maintained, and contributed to a public nuisance of illegal handguns in the state. As such, Ms. Halligan argued that gun manufacturers should be liable for the criminal conduct of people using handguns. The New York appellate court rejected this theory, explaining that it had "never recognized [the] common-law public nuisance cause of action" advanced by Ms. Halligan. In halting Ms. Halligan's pursuit of social goals through the courts, the court concluded that "the Legislative and Executive branches are better suited to address the societal problems concerning the already heavily regulated commercial activity at issue."

In 2003, a bipartisan coalition in Congress responded to the type of frivolous litigation pushed by Ms. Halligan by [enacting](#) the Protection of Lawful Commerce in Arms Act (PLCAA). The National Rifle Association, which [opposes](#) the nomination, described the PLCAA as "an essential protection both for the Second Amendment rights of honest Americans and for the continued existence of the domestic firearms industry."

While Congress debated the PLCAA, Ms. Halligan mischaracterized this legislation, by claiming "[I]f enacted, this legislation ... would likely cut off at the pass any attempt by states to find solutions ... that might reduce gun crime." In truth, the PLCAA dealt only with a specific type of frivolous civil lawsuits and did not bar states from making "any attempt" to find solutions. If the

PLCAA were as broad as Ms. Halligan falsely claimed, nearly half of Senate Democrats would not have supported it.

Disregarding Congress and State Law in Pursuit of Activism

Despite the New York appellate court's rejection of her argument in *Sturm*, and undeterred by the enactment of the PLCAA, Ms. Halligan persisted in advancing a specious legal theory of gun manufacturer liability. In *City of New York v. Beretta*, before the U.S. Court of Appeals for the Second Circuit, Ms. Halligan chose to involve her office in another case brought against gun manufacturers. This time, she filed an *amicus* brief challenging the PLCAA itself. Ms. Halligan's brief asserted, among other things, that the PLCAA "violates fundamental principles of federalism" because it foreclosed certain causes of action available under state common law. Undermining Ms. Halligan's assertion that a state cause of action had been foreclosed by the PLCAA, however, was of course the prior dismissal by the New York appellate court in *Sturm* – a case with which she had been personally involved. The Second Circuit rejected Ms. Halligan's argument, holding that the PLCAA was constitutional and dismissing the litigation against gun manufacturers.

Lack of Candor

Members of the Senate Judiciary Committee questioned Ms. Halligan about her previous positions regarding tort liability of gun manufacturers during the committee evaluation. Her answers to those queries demonstrate a lack of candor and forthrightness. For example, when Senator Coburn asked about a speech criticizing PLCAA while it was under consideration in Congress, Ms. Halligan deflected, merely saying:

"At the time [I gave the speech], the Attorney General (Eliot Spitzer,) was pursuing a common law action against a number of gun manufacturers, wholesalers, and retailers. That lawsuit was dismissed on legal grounds by a New York state intermediate appellate court. In light of the New York state court's decision, there is no basis in New York law for holding firearm manufactures liable for crimes in which a handgun is used. **I am not familiar with the laws of any other state or federal law, and have no basis for an opinion regarding any such claims that might be brought in other jurisdictions.**"

The record, however, shows Ms. Halligan did, in fact, have a thorough knowledge of nationwide tort laws. First, her brief in *Beretta* discussed how "state legislatures across the country have addressed the alleged problem of civil liability" litigation and cited an exhaustive law review article detailing the legal landscape on such legislation. Second, the *Beretta* brief cites a U.S. District Court opinion that specifically noted the laws of other states. It is hard to believe Ms. Halligan was not "familiar with the laws of any other state" or had "no basis for an opinion regarding any such claims that might be brought in other jurisdictions."

Judicial Activism

Ms. Halligan's persistent activism against firearms manufacturers is not surprising. She has spoken approvingly of using courts to promote liberal ambitions, suggesting she would be an unconstrained activist if confirmed. In a speech in 2003, Ms. Halligan said: "courts are the special friend of liberty. Time and time again we have seen how the dynamics of our rule of law enables enviable social progress and mobility." In subsequent *amicus* briefs, she tried to convince the Supreme Court to adopt that view, favoring judicial over legislative implementation.

- In *Scheidler v. National Organization for Women*, Ms. Halligan argued for an expansive definition of extortion under the Hobbs Act, which would have allowed for a cause of action against pro-life protestors. The Supreme Court rejected her position 8-1.
- In *Hoffman Plastics v. NLRB*, Ms. Halligan argued that the National Labor Relations Board should have the authority to grant back pay to illegal aliens, despite federal law prohibiting illegal aliens from working in the United States. The Supreme Court rejected her argument.

Detention of Enemy Combatants

In 2004, Ms. Halligan was a member of the Association of the Bar of the City of New York's Committee on Federal Courts when it issued a report asserting that the congressional Authorization for Use of Military Force (AUMF) did not authorize long-term detention of enemy combatants. The report also argued against the use of military commissions to try alien terrorists and in favor of Article III civilian courts. The Supreme Court, and the Obama Administration itself, have rejected the fundamental assertions of the report. Ms. Halligan tried to distance herself from the report when she came before the Senate Judiciary Committee. However, at the time the report was being considered by the Committee on Federal Courts she chose not to abstain from it, as four other committee members had done. Furthermore, Ms. Halligan did not repudiate the report or its left-wing extremism before her nomination or before her hearing.

Ms. Halligan also co-authored an *amicus* brief in the 2009 case *al-Marri v. Spagone* arguing that the AUMF did not authorize the seizure and long-term military detention, without criminal trial, of a lawful permanent resident alien. Her position was contrary to the clear Supreme Court holding in *Hamdi* that the detention of enemy combatants until the end of hostilities is proper under the AUMF and the Constitution.

Underworked Circuit Court

In recent years, Democrats opposed filling a seat on this same court because, they argued, there was no "judicial emergency" based on the court's workload. Since then, the court's caseload has declined further. The total number of appeals filed is down more than 13 percent since 2005. The D.C. Circuit's caseload remains so light that the number of appeals pending per panel is less than half of the average circuit court workload. In fact, the D.C. Circuit is one of the least busy circuit courts in the country.

A Record Deserving of Opposition

Ms. Halligan has demonstrated an activist judicial philosophy and pursued litigation to advance that philosophy over the course of her career. There is little to suggest she will not do so from the bench.